of bulk property were produced before the Court the whole bulk was before the Court or only the samples. In the view I have taken of this case it is not necessary for me to decide this difficult point; but I am inclined to think that, at all events for the purposes of section 435 of the Criminal Procedure Code, the only property which can be said to have been "produced before the Court" is property which has been physically produced before it.

For the above reasons I allowed the appeal in so far as the Magistrate's order relating to exhibits was concerned and substituted therefor an order that Exhibits P. 1 and P. 2 be returned to the Customs authorities. The appeal against the acquittal, not having been proceeded with, was dismissed.

Magistrate's order varied.

YONG NYAT YU & ANOR. v. LEE KEE.

[Orig. Civ. Juris. (Wilson, J.) August 21, 1952]
[K. L. — Civil Appeal No. 12 of 1952]

Landlord and tenant — Possession — Arrears of rent — Whether deposit as rent in advance affects arrears on due date.

The defendant paid two months rent on deposit at the request of the plaintiffs who agreed to refund the deposit at the end of the tenancy. After paying the deposit the defendant continued to pay his rent monthly in arrears until May 1951. In July the plaintiffs served him with notice to quit on the ground that his rent had been in arrears more than 14 days.

Held: as the plaintiffs held two months rent as deposit at the time of the notice to quit, no rent was therefore due.

CIVIL APPEAL.

S. M. Yong for the appellants-plaintiffs.

D. G. Rawson for the respondent-defendant.

Cur. Adv. Vult.

Wilson, J. : — The plaintiffs are the landlords of No. 92A Tong Shin Terrace, Kuala Lumpur and the defendant the tenant thereof. By a letter dated 16th July, 1951, the plaintiffs through their solicitors informed the defendant that he was more than 14 days in arrears with his rent and requested him to vacate the premises on the 31st August, 1951. The defendant did not vacate the premises and on the 11th October, 1951, the plaintiffs filed a claim in the Magistrates' Court claiming vacant possession and and arrears of rent and mesne profits.

At the trial it was suggested *inter alia* that the defendant had tendered the rent for the months of May and June, 1951, which allegedly had not been paid. Mr. Rawson has admitted now that there was no valid tender of the rent by the defendant and therefore no point arises in that connection in this appeal.

The learned Magistrate found that on the 16th July, 1951, the defendant was not in arrears with his rent for other reasons.

The plaintiffs bought the house No. 92A Tong Shin Terrace in January, 1951, at which date the defendant was already a tenant. The plaintiffs' manager saw the defendant and told him that the plaintiffs had bought the house and he asked for two months rent on deposit which he received. According to the manager the amount of this deposit was to be refunded at the end of the tenancy. The learned Magistrate found that as on the 16th July, 1951 the plaintiffs held the deposit as rent in advance no arrears of rent were due on that date. The first proviso to section 4(1) of the Control of Rent Ordinance, 1948 provides that it shall not be unlawful for a landlord to receive and for a tenant to pay in advance rent not exceeding three months' rent. The proviso does not refer to a deposit to be refunded at the end of the tenancy. If such a deposit is not to be regarded as an advance of rent, it is arguable that it would be a valuable consideration in addition to the rent and would be contrary to the provisions of section 4(1) of the Ordinance. In my view the agreement between the manager and the defendant that the deposit should be refunded at the end of the tenancy can only be regarded as an agreement that this should be done if at that time the defendant had paid all his rent and no rent was then due to the plaintiffs. After paying the deposit the defendant continued to pay his rent monthly in arrears although not on regular dates until May, 1951. It is admitted that the rent for May and June was not validly tendered, but I agree with the learned Magistrate that as at the time of the notice to quit the plaintiffs held two months rent on deposit they cannot be heard to say that any rent was due. In these circumstances I find that the notice to quit was bad and the appeal against the Magistrate's refusal to make an order for vacant possession is dismissed.

The learned Magistrate, however, has not referred in his grounds of judgment to the claim for rent. The plaint was filed on the 13th October, 1951, and it seems clear that at that date the defendant owed rent for July, August and September which had not been validly tendered. In these circumstances judgment must be entered in the lower Court for the rent for those months at $43.75 per month, amounting to $131.25 and the plaintiffs must have such costs in the Court below as would have been due to them if judgment had been entered in the Court below for them for that amount.

So far as the costs of the appeal are concerned there will be no order.

Appeal dismissed.

CHUNG LAI HENG (m.w.) v. MURUGAPPA CHETTIAR.

[App. Civ. Juris. (Brown, J.) October 16, 1952]

[Singapore — District Court Appeal No. 16 of 1952]

Landlord and tenant — Possession — Breach of Municipal Ordinance — Control of Rent Ordinance, 1947, s. 14(1)(k).

The appellant is the landlord of premises of which the respondent is the tenant. She claimed possession on the ground that the tenant had committed a breach of the Municipal Ordinance by erecting two sheds for which offence she had been fined. The learned District Judge refused to make an order because he took the view that under section 14(k) of the Control of Rent Ordinance, the landlord must be exposed to the penalty, fine or forfeiture at the date of expiry of the notice to quit.

Held on appeal: (1) the true interpretation of section 14(k) is that the tenant loses his protection if he has committed a breach of such a nature that it exposes his landlord to any penalty, fine or forfeiture; (2) on the evidence before the Court, it had not been proved that the respondent erected the sheds.

Case referred to :—

(1) *Fernandez v. Murugiah* (1950) M.L.J. 83.

DISTRICT COURT APPEAL.

C. F. J. Ess for the appellant.

L. A. J. Smith for the respondent.

Cur. Adv. Vult.

Brown, J. : — Section 14 of the Control of Rent Ordinance 1947 provides that no order or judgment for the recovery of possession shall be made except, *inter alia :—*

"(k) where the tenant or any other person occupying the premises under him has committed a breach of any provision of the Municipal Ordinance or of any rule or by-law made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture."

The appellant was the plaintiff in the Court below and is the landlord of No. 17, Owen Road. She claimed possession under para. (k) of section 14. It was proved that on 14 August 1950 she was fined $50 under section 144(7) (b) of the Municipal Ordinance in respect of the erection upon the premises of two sheds while the premises were in the occupation of the tenant, who is the respondent in this appeal. On September 6, 1950 she had given the respondent notice to quit on 31st October, and before the expiration of the notice the sheds had been demolished.

The learned District Judge refused to make an order for possession because he took the view that in order to invoke the sub-section the landlord must be exposed to the penalty, fine or forfeiture at the date of the expiry of the notice to quit. He based his view upon the following passage in the Judgment in *Fernandez v. Murugiah*[1] : "Whether the case falls within one of the exceptions (to section 14) or not depends on the state of facts at the moment when the previous tenancy is determined." But the short question here is whether the words in the sub-section "which exposes the landlord to any penalty, fine or forfeiture" merely qualify the earlier words "has committed a breach" or whether they impose a requirement that upon the operative date, *viz.*, when the date on which the tenancy is determined, the landlord must be exposed to any penalty, fine or forfeiture.

It seems to me that the view of construction taken by the learned District Judge would render the section nugatory. If the landlord must be exposed to the penalty, fine, or forfeiture at the date of the expiry of the notice to quit a tenant, having committed the breach and having been served with a notice to quit terminating the contractual tenancy, could cease committing the breach before the expiry of the notice, and having become a statutory tenant under section 16 he could commit a further breach and be given a further notice; and before the expiry of that notice he could cease the breach and claim the protection of the sub-section. This could go on *'ad infinitum'*.

I think that the words "which exposes the landlord to any penalty, fine or forfeiture" qualify the earlier words. I think that the true construction is that not every breach of the Municipal Ordinance on the part of a tenant will deprive him of the protection afforded by section 14. He is only to be deprived of that protection if he has committed a breach of such a nature that it exposes his landlord to any penalty, fine, or forfeiture.

I therefore think that the learned District Judge was wrong in refusing to make an order for possession upon that ground.

[The rest of the judgment dealt with the facts which are considered unnecessary for the purpose of this report. — *Ed. M.L.J.*].

Appeal allowed.

REG. v. GEORGE E. LEE.

[App. Crim. Juris. (Brown, J.) October 24, 1952]

[Singapore — Special Case No. 2 of 1952]

Municipal Ordinance (Cap. 133), s. 144(7) and (11)(e) — Whether change of user in dwelling premises is an offence thereunder.

This was a Special Case stated and argued before the High Court. The defendant had erected an annexe to his house as a recreation room but subsequently used it as a store-room in connexion with his business. He was prosecuted under section 144(7) of the Municipal Ordinance for "commencing building operations involving the erection of a building." The prosecution relied on section 144(11)(e) which provides that a person shall be deemed to erect a building who "converts to other